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that would enlarge the gift, which of course cannot be done without the consent of the donor.

If the intestate did not like the gift as made, he should have declined to accept it and not attempt (as his personal representative is doing) to make it include in effect, contrary to its terms, an insurance against risks arising from the negligence of the defendants' servants.

There was error in the judgment complained of, and it is reversed and the case remanded.

In this opinion the other judges concurred.

LEGAL NOTES.

THE Supreme Court of the United States has recently reversed the decision of the United States Circuit Court for the Southern District of Mississippi, which had declared the Mississippi Railroad Commission Act unconstitutional (in *Farmers' Loan and Trust Co. v. Stone*, 20 Fed. Rep. 270. See also, 23 Am. Law Reg. N. S. 476). This decision of the Supreme Court is one of the most important which that tribunal has delivered, in that it goes far towards settling the controversy upon the right of the states to regulate railroad traffic. It may be considered as a supplement to the famous *Granger Cases* in 1876 (94 U. S. 113). The opinions being too long to publish in full, an abstract is here given. The facts are these: The Mississippi Railroad Commission Act of 1884 enacts, that the commissioners shall revise the tariffs of all the railroads in that state, and fix rates which shall be a fair and just return on the value of the railroad property; that they shall require from the railroads information as to the management of their lines; that they shall investigate accidents; shall see that depots and waiting-rooms are adequate and suitable; shall bring suit in the name of the state against railroads violating any provision of the act, which suits cannot be dismissed without the consent of both the court and the commission. A penalty of \$500 follows the violation of the act. Any determination by the commission shall be *prima facie* evidence that the same is right and proper.

A supplemental act provides, that traffic from outside to outside the state shall not be interfered with. Such is the outline of the act.

The Mobile and Ohio Railroad had charters from several states and land grants from the United States, the object being to make a through line of communication from the Gulf to the Great Lakes. By its Mississippi charter the company had "full power to prescribe such by-laws, rules and regulations as they shall deem proper, not contrary to this charter or the laws of this state or of the United States." It had also power, "from time to time, to fix, regulate and receive the toll and charges by them to be received."

Suit was brought to enjoin the commission from proceeding, on the ground that the act under which they claimed authority; (1) impaired

the obligation of a contract ; (2) regulated interstate traffic ; (3) denied to the railroad company the equal protection of the laws, and deprived it of its property without due process of law ; (4) conferred both legislative and judicial powers upon the commission, and (5) was void on its very face by reason of inconsistencies and uncertainties.

The judgment of the court, delivered by the Chief Justice, is in substance as follows :

The power of regulating railroad charges is a continuing power, to be bargained away, if at all, only by words of positive grant, which are not to be found in the present instance. Every presumption is against such bargaining away.

The grant in the charter implies authority to charge reasonable rates. The legislature is the judge of what this reasonableness is.

The decision of the state court upon the same act in the case of another company (*C. Railroad Co. v. Y. & M. Railroad*, 62 Miss. 607), holding that the power of the state had been surrendered where the charter prescribed maximum rates, is not in conflict with the present decision.

As to interstate commerce, the fact that the Mobile and Ohio Railroad was intended as a great interstate avenue of commerce, does not make any difference. The state has power over her corporations, within her own borders, so long as she does not regulate interstate commerce. Under the act the commissioners may do much which is not interference with interstate traffic. As yet they have done nothing. The presumption is that they will not exceed their constitutional authority, and it will be time enough to interfere when they do. It is difficult to lay down a general rule as to what constitutes interference on the part of a state with interstate traffic.

General statutes regulating railroads, unless forbidden by contracts in the charter, do not take away from the corporation the equal protection of the laws, nor deprive it of its property without due process of law.

The object of this statute is to regulate rates and enforce certain regulations of police.

In its general scope and aim it is constitutional. Questions may arise upon it which may safely be left for consideration until they are presented.

Mr. Justice HARLAN dissented, not denying the right to create railroad commissions, but distinguishing the present from cases where the constitution of the state, or the charter itself, reserved to the state a right of amendment or repeal, and holding that in the present instance the charter contained a contract permitting the company to regulate its rates within what was reasonable ; of which reasonableness the courts, not the legislature, should judge.

As already remarked this decision is a highly important one. Important, first, as marking a turning point in the legal contest which has been waged for the last ten or fifteen years between the states and the corporations, the former relying upon the maxim that the corporation cannot be greater than the power which has created it, and the latter invoking the authority of the *Dartmouth College Case*. On the part of the corporations the claim was raised, that if the company had chartered power to fix rates, nothing but an express reservation in the same charter could deprive it of that exclusive power. The *Granger Cases* decided

that a reservation in the state constitution, or by statute prior to the charter, would have the same effect as a reservation in the instrument; but the reasoning of Mr. Justice WAITE pretty well indicated that the Supreme Court would not stop there. Accordingly this case decides that nothing short of a plain renunciation in the charter will bar the paramount power of the state. Whether this plain renunciation must be in actual words, or may arise by necessary implication, is the one point in this controversy still to be settled. For while on the one hand the chief justice seems to approve of the Mississippi state court's ruling, that a schedule of maximum rates in the charter of a railroad is an implied contract by the state not to prescribe lower rates, on the other hand he hints at a doubt whether the police power of regulation can be bargained away at all by the state.

If the latter be the true principle, then there is but one restraint on the power of the states to fix railroad rates—such rates may not be tantamount to confiscation and destruction.

This decision is progress towards a definition of that undefined and almost undefinable attribute of sovereignty—the police power of the states. This power is admitted to sanction regulations for the safety and convenience of those who, as travellers or otherwise, do business with railroads. It could not be said hitherto that the police power reached to the protection of the pockets of the public—to the regulation of railroad charges.

This decision is important, again, on the subject of interstate commerce, since it disposes of the ingenious—for it is no more than ingenious—argument that a line chartered and built as a through route, is less subject to state control, in the matter of local commerce, than merely local roads or roads pieced together into a through line. However difficult its application, the rule of law is clear—interstate commerce may not be interfered with by the states, even in the absence, as at present, of national legislation, but, until Congress acts, state regulation of local traffic may “ incidentally ” and “ indirectly ” affect interstate traffic.

This decision is important, finally, as the first in which a railroad commission law has, in its entirety, come up before the Supreme Court for review. The attitude of the court towards railroad commissions is clearly indicated.

While admitting that undue and unconstitutional powers may be reposed in them, railroad commissions, even the more stringent ones, are, on the whole, sanctioned as a legitimate means of legitimate legislative control.

CHARLES CHAUNCEY SAVAGE:
